

## **Item SPR06-35 Response Form**

**Title:** Demographic Data Relating to Regular Grand Jurors (adopt rule 876 of the California Rules of Court)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

☐ **Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

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<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Friday, June 23, 2006
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee. All comments will become part of the public record of the council's action.*

Title	<b>Demographic Data Relating to Regular Grand Jurors</b> (adopt rule 876 of the California Rules of Court)
Summary	Proposed rule 876 would require the trial courts annually to collect and maintain confidential demographic information regarding prospective and seated grand jurors and to provide general demographic information about the selected jurors to the public in a manner to be determined by each court.
Source	Access and Fairness Advisory Committee
Staff	Donna P. Clay-Conti, 415-865-7911, <a href="mailto:donna.clay-conti@jud.ca.gov">donna.clay-conti@jud.ca.gov</a>
Discussion	<p>The appointment of representative grand juries has long been a goal of the Judicial Council. On July 1, 1992, the council adopted section 17 of the Standards of Judicial Administration, which suggests a procedure for nominating regular (civil) grand jurors that would result in broad-based representation from the community. The standard outlines three methods that jury commissioners can use for nominating qualified grand jurors—1) by randomly obtaining the names of members of the public in the same manner as for trial jurors, 2) from recommendations that encompass a cross-section of the county’s population base solicited from a broad representation of community-based organizations, civic leaders and judicial officers, 3) and by application from interested citizens solicited through media or mass mailing. The jury commissioner can use one or more of these methods. The standard also encourages judges to consider carry-over jurors to ensure broad-based representation on grand juries (subsection (c)) and encourages judges who nominate persons for the grand jury to “select candidates from the list returned by the jury commissioner” or to use “a nomination procedure that ensures broad-based representation from the community” (Cal. Stds. of Jud. Admin. § 17(d)).</p> <p>The history of Section 17 reflects that it was in response to a council directive to draft appropriate legislation, rules of court, and standards of judicial administration that “fulfill the dual functions of providing <i>fairness in jury selection and minimizing challenges</i>,” (emphasis added). (Invitation to Comment Summary, <u>Proposals Regarding Grand Juries</u>, dated November 1991.) This directive appears to have been in response to the 1991 amendment to Penal Code section 904.6, which was enacted as urgency legislation in September 1991 and was council-supported. Subsection (e) of that statute provides:</p>

It is the intent of the Legislature that all persons qualified for jury service shall have an equal opportunity to be considered for service as criminal grand jurors in the county in which they reside, and that they have an obligation to serve, when summoned for that purpose. All persons selected for the additional criminal grand jury shall be selected at random from a source or sources reasonably representative of a cross section of the population which is eligible for jury service in the county.

The legislative history of Penal Code section 904.6 indicates that when the bill was first introduced in February 1991 (by Assembly member Cannella) it was intended to authorize the impanelment of one additional grand jury in any county (rather than in specified counties), as specified in the bill. When the bill was amended on April 18, 1991, section 902.9 was added, which expressed the legislative intent with respect to listing and selection of grand juries. That section stated, in part, “[i]t is the intent of the Legislature that grand juries be as representative as reasonably possible of the racial, gender, and ethnic diversity of the jurisdiction in which they sit.” That language was later amended to reflect the existing statutory language, which refers to a “reasonably representative of a cross section of the population which is eligible for jury service in the county,” and the numbering was changed to section 904.6(e). The legislative history of Penal Code section 904.6(e) and the history of Standard 17, strongly suggest that they were both intended to increase the representation of racial and ethnic minorities who are eligible for grand jury service in California. In addition, in 1992 the Judicial Council, through its Advisory Committee on Racial and Ethnic Bias in the Courts, conducted a series of studies designed to capture public perceptions of fairness and to examine the treatment of minorities in the courts. These studies culminated in a 1997 report to the council, which contained this finding:

[R]acial and ethnic minorities are usually unrepresented or underrepresented on grand juries because of the way these juries are selected. This lack of representation is likely to persist unless conscious, vigorous efforts are made to make grand juries more representative.

*(Final Report of the Judicial Council Advisory Committee on Racial*

*and Ethnic Bias in the Courts*, Chapter 11, p. 201.)

The report recommended that “the Judicial Council direct staff to amend section 17 of the Standards of Judicial Administration to state that grand jury selection lists should also include reasonable representation of the county’s racial and ethnic minorities, and that if more representative grand juries cannot be achieved under existing statutes, the Judicial Council should support legislation that would produce representative grand juries.” (Id. at 201-202.) The council directed the advisory committee to implement both of these recommendations. This proposal seeks to explore the current necessity of implementing these recommendations.

In 2002, the Judicial Council, through its Rules and Projects Committee (RUPRO), also expressed continuing concern about the overall lack of representative grand juries. The advisory committee’s workplan reflected a project directed at identifying best practices for recruiting representative grand juries, which was given a number three priority. RUPRO directed the Access and Fairness Advisory Committee to explore the issue of the lack of representative grand juries as a number one, as opposed to a number three, priority.

In response to RUPRO’s directive, the advisory committee formed a “representative grand juries” working group whose purpose is to investigate the reasons for the overall apparent lack of broad representation that would reflect a cross section of the county’s eligible population base in California grand juries; and to develop strategies or recommendations to the council for effectively addressing this concern. The working group first solicited the assistance of the two grand jury associations in the state—the Jury Education and Management Forum and the California Grand Jury Association. Both groups devoted time during their annual meetings in 2002 during which their members participated in focus groups conducted by members of the Access and Fairness Advisory Committee, committee staff, and staff of the Center for Judicial Education and Research. The focus groups elicited the opinions of grand jury members as well as jury managers about the possible reasons for the lack of ethnic and racial diversity among grand jury members and compiled suggestions on how to effectively promote change in this area.

The working group also recognized that it had no available data by which to determine whether, or to what extent, the grand juries impaneled since the judicial standard was adopted reflect a cross-

section of the communities they serve. The working group recommended to the advisory committee that it conduct a court survey to determine whether the demographic composition of the grand juries had changed since the adoption of Standard 17. Therefore, in May 2004 the committee disseminated a survey to trial court presiding judges, executive officers and jury managers. Forty-three of the 58 courts responded. The responses revealed that few courts maintain demographic data on the race and ethnicity of individual jurors, although a slightly larger group of the respondents maintained aggregate data of this information.

The survey results demonstrate that there is a dearth of statistical data regarding individual grand juror demographics in the trial courts. This lack of data precludes the drawing of any reliable conclusions regarding the current representativeness of California's grand juries. The advisory committee believes this information is critical to the committee's ability to address the council's concern, to monitor progress in this area, and to determine whether and how to implement the recommendations of the 1997 report.

The proposed rule would accomplish the following:

- Require jury commissioners or designees to develop a method for obtaining demographic information from all prospective grand jurors, including: their age range, gender, and race or ethnicity (based on the formal U.S. Census categories) of each qualified candidate;
- Give grand juror candidates or nominees the option to provide this information;
- Require the trial courts to develop and maintain a database containing the following information regarding qualified candidates or nominees for the grand jury, those ultimately selected to serve as grand jurors, and any carry-over jurors: name, age range, occupation, gender, race or ethnicity, and the year(s) served on the regular grand jury;
- Suggest that the trial courts indicate in the database how the seated grand jurors initially became candidates for jury service (by random draw, by application, or by nomination); and
- Require that the trial courts annually develop a summary of the information, which would not include names of the candidates, nominees or jurors contained in the database, and make the information available to the public.

The text of the proposed rule is attached at pages 6-7.

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Attachment

Rule 876 of the California Rules of Court would be adopted, effective January 1, 2007, to read:

**Rule 876. Demographic data relating to regular grand jurors**

**(a) [Definitions] The following definitions apply under this rule:**

- (1) “Regular grand jury” means a body of citizens of a county selected by the court to investigate matters of civil concern in the county, whether or not that body has jurisdiction to return indictments.
- (2) “Race or ethnicity” reflects the concept of race used by the United States Census Bureau and reflects self-identification by people according to the race or races to which they most closely identify. These categories are sociopolitical constructs and should not be interpreted as being scientific or anthropological in nature. The categories include both racial and national-origin groups.

**(b) The jury commissioner or their designee must:**

- (1) Create a method to capture the following data from prospective regular grand jurors:
  - (A) Age range, specifically:
    - (i) 18–25
    - (ii) 26–34
    - (iii) 35–44
    - (iv) 45–54
    - (v) 55–64
    - (vi) 65–74
    - (vii) 75 and over
  - (B) Gender; and
  - (C) Race or ethnicity from the following categories (candidates may select more than one category):
    - (i) American Indian or Alaskan Native
    - (ii) Asian
    - (iii) Black or African American
    - (iv) Hispanic/Latino
    - (v) Native Hawaiian or other Pacific Islander
    - (vi) White

- (vii) Other race or ethnicity (please state: \_\_\_\_\_)  
(viii) Decline to answer

(2) Develop and maintain a database containing the following information regarding qualified candidates who constitute the grand jury pool, the candidates who are ultimately selected by the court to serve as grand jurors, and any carry-over grand jurors: name, age range, occupation, gender, race or ethnicity, and the year(s) served on the regular grand jury. The database should indicate how the juror initially became a candidate (by random draw, application, or by nomination).

(c) The court must develop and maintain an annual summary of the information in the database maintained under (b)(2). The summary must not include the names of the candidates and must be made available to the public.

### **Advisory Committee Comment (2007)**

This rule is intended to facilitate the courts' achievement of the goals stated in section 17 of the Standards of Judicial Administration, which encourages courts to employ various methods of soliciting qualified candidates to serve on regular grand juries that reflect a representative cross-section of the community they serve. Those methods include obtaining recommendations for grand jurors who encompass a cross-section of the county's population base, solicited from a broad representation of community-based organizations, civic leaders, and superior court judges, referees, and commissioners (subsection (b)(2)); for the court to consider carry-over grand jury selections under Penal Code section 901(b) to ensure broad-based representation (subsection (c)); and to encourage judges who nominate persons for grand jury service under Penal Code section 903.4 to select candidates from the list returned by the jury commissioner or otherwise to employ a nomination procedure to ensure broad-based representation from the community.

This rule is also intended to assist the courts in establishing a formal mechanism whereby they can monitor the extent to which they achieve the goal of seating representative regular grand juries through a process comparable to that stated in Penal Code section 904.6(e), which requires that persons selected for the "... criminal grand jury shall be selected at random from a source or sources reasonably representative of a cross section of the population which is eligible for jury service in the county."